

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NOs.2179 to 2181 and 8300 to 8302 of 2003
and

W.P.M.P.NOs.22612, 22613 of 2003,
10199 to 10201 of 2005 and 17577 to 17579 of 2006

B.Mathulingam .. Petitioner in
W.P.No.2179/2003

P.Sankaralingam .. Petitioner in
W.P.No.2180/2003

Prabhu .. Petitioner in
W.P.No.2181 of 2003

K.R.Ravi .. Petitioner in
W.P.No.8300 of 2003

K.R.Manikandan .. Petitioner in
W.P.No.8301 of 2003

S.Rajakani .. Petitioner in
W.P.No.8302 of 2003

Vs.

- 1.The Deputy Registrar,
Co-operative Societies,
Uthagamandalam,
Nilgiris.
- 2.The Special Officer,
The Nilgiris District Plantation Workers
Co-operative Thrift and Credit
Society Ltd.,
No.J.188 R.Raman Nair Buildings,
Rokeby,
Coonoor-643 101.

.. Respondents in
all the petitions

These writ petitions have been preferred under Article 226 of the Constitution of India, the first three petitions are filed praying for the issue of a writ of certiorari calling for the entire records relating to the impugned order in Tha.The 4/2002/Sa.Pa. dt.24.12.2002 passed by the first respondent and the

consequential order passed by the second respondent in his proceedings dated 30.12.2002 and to quash the same and the other three petitions are filed praying for the issue of a writ of certiorarified mandamus calling for the records relating to the order in Tha.Thi.4/2002/Sa.Pa, dated 24.12.2002 of the first respondent reverting the petitioners from the post of Clerk to the post of Jewel Appraiser and attempting to recover a sum of Rs.53091.30 in WP.No.8300/2003 and a sum of Rs.8417/- in WP.No.8301/2003 and a sum of Rs.72960.30 in WP.No.8302/2003 paid towards salary for holding the post of Clerk and to quash the same and consequently, to direct the respondents to continue the petitioners as Clerks.

For Petitioners : Mr.Suresh Viswanath
in WP Nos.2179 to 2181 of 2003
Mr.D.Hariparanthaman
in WP Nos.8300 to 8302 of 2003

For Respondents : Mr.S.Gopinathan, AGP for R1
Mr.S.V.Duraisolaimalai for R2

COMMON ORDER

This order shall govern all the above writ petitions, whereby all the petitioners challenge an order of the first respondent made in Tha.The 4/2002/Sa.Pa., dated 24.12.2002.

2.The affidavits filed in support of the writ petitions are perused. The court heard the learned counsel on either side.

3.Concededly, the petitioners in all these petitions, who were working as Jewel Appraisers in different branches of Co-operative Society, Nilgiris District, were promoted as Clerks in the year 1999 by the President of the Society. After the resolution of the Board, the Special Officer was appointed. He brought to the notice of the Joint Registrar that these promotions were illegal. On the strength of the report, an inspection was made by the Joint Registrar and following the inspection made by the Joint Registrar, he issued a direction to the respondents to take necessary steps to recover the excess salary paid to the petitioners, since in his opinion, all the promotions were irregular and illegal. Accordingly, the first respondent has passed an order that the respective sums have got to be recovered from the petitioners, alleging that they were drawing salary in excess by way of an irregular and illegal promotions. The Special Officer issued a show cause notice on 3.5.2002 for the recovery of the excess amount and also asked as to why they should not be reverted from the post of Clerk to the original post of Jewel Appraiser. The petitioners have put forth their explanations on 13.5.2002. In the meanwhile, the first respondent has passed the final order under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 on 24.12.2002 and under these circumstances, these writ petitions have arisen before this court.

4. On the earlier occasion, one sort of petitioners filed writ petitions, where they were advised to file revisions before the competent authority. When the revisions were filed, they were returned, since it was a fit case where an appeal should have been preferred and under these circumstances, the cases have arisen before this court.

5. The learned counsel for the petitioners would submit that the order passed by the first respondent was without jurisdiction; that admittedly, all the petitioners were working as Jewel Appraisers and they were promoted by the Board as clerical staff; that they were working as Clerks and they were drawing salary; that the Special Officer, who is also vested with equal powers that of the Board, cannot complain or reopen the proceedings or pursuant to which, proceedings could not be initiated; that in order to proceed against them under Section 87 of the Act, there should have been misappropriation or fraudulent activities, but nothing is noticed; that apart from that the first part of the order was for recovery, which according to the Department was drawn in excess and the later part is as to the reversion; that insofar as the first part is concerned, namely recovery, an appeal would lie; that insofar as the second part, the first respondent has no jurisdiction to pass an order and under these circumstances, the entire proceedings have got to be quashed.

6. The court heard the learned counsel for the respondents on the above contentions.

7. After doing so and looking into the materials available, the court is of the considered opinion that all the writ petitions have got to be dismissed. In the instant case, it is not in controversy that these petitioners were originally appointed as Jewel Appraisers in different branches of Co-operative society. They were promoted as clerical staff. A report was given by the Special Officer to the Joint Registrar that their promotions were irregular and illegal. According to the Department, an inspection was made by the Joint Registrar, who has found to be so and thus, proceedings were initiated and the order under challenge came to be passed, where there were two parts. The first part speaks about the recovery, which according to the department is the excess payment and the second part is as to why they should not be demoted from the post of clerks to the original post of Jewel Appraisers. Thus, it would be quite clear that so far as the first part is concerned, there is an appeal, which is provided under Section 152 of the Act. So far as the second part is concerned, a revision has got to be preferred.

8. On the earlier occasion, when a writ petition was filed before this court, permission was granted to file a revision before the revisional authority, but the revisions were returned, directing them to take proper steps. Therefore, once there was a permission given and the revision would also lie and so far as the first part of the order is concerned, an appeal alone would lie,

these petitioners should have taken proper steps before the appropriate forum, but without knocking the doors of the appropriate forum, they have brought forth these writ petitions before this court. Now, it is also brought to the notice of the court by the learned counsel for the petitioners that the writ petitions have been filed within time and under these circumstances, the question of limitation would lie when the other petitions are filed.

9. Under these circumstances, the petitioners are given liberty to prefer an appeal or revision as the case may be. There is no impediment for the petitioners to raise all the contentions, both factually and legally, before the respective Authorities at the time of enquiry of appeal or revision, as the case may be. Taking into consideration the pendency of the writ petitions before this court, petitioners are permitted to prefer an appeal or revision, as the case may be, within a period of three weeks herefrom. Accordingly, these writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Deputy Registrar,
Co-operative Societies,
Uthagamandalam,
Nilgiris.

2.The Special Officer,
The Nilgiris District Plantation Workers
Co-operative Thrift and Credit
Society Ltd.,
No.J.188 R.Raman Nair Buildings,
Rokeby, Coonoor-643 101.

- 1 cc to Mr. D. Hariparanthaman, Advocate SR No. 69083
- 1 cc to the Government Pleader SR No.69029
- 1 cc to Mr. M. Suresh Viswanath, Advocate SR No.68838
- 1 cc to Mr. S. V. Durai Salaimalai, Advocate SR No. 69085

W.P.NOs.2179 to 2181
and 8300 to 8302 of 2003

AKR (CO)

SR/22-11-2007

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